

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**MAR 17 1995**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In The Matter of )

Reorganization and Revision of )  
Parts 1, 2, 21 and 94 of the )  
Rules to Establish a New Part 101 )  
Governing Terrestrial Microwave )  
Fixed Radio Services )

WT Docket No. 94-148

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To: The Commission

**REPLY COMMENTS**  
**OF**  
**MONTANA POWER COMPANY**

**MONTANA POWER COMPANY**

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**EXECUTIVE SUMMARY**

Montana Power reviewed the Comments filed in this proceeding and found that a consensus of the Comments supports the consolidation of the Part 94 and Part 21 microwave rules. Nevertheless, many parties recommended other amendments to the proposed Part 101 rules that would further streamline the existing Part 94 and Part 21 microwave rules, producing more consistent and uniform rules. Montana Power supports these recommendations because they promote efficient use of the microwave spectrum and equitable treatment between Part 94 and Part 21 microwave licensees. Montana Power agrees with other commenters that the Commission should: (1) allow POFS licensees to lease reserve capacity to common carriers for their customer traffic, (2) allow both common carrier and non-common carrier use and licensing of microwave transmitters; (3) extend the 21-day minor modification rule to POFS licensees; and (4) extend the BSTA policy to POFS licensees.

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REPLY COMMENTS  
OF  
MONTANA POWER COMPANY

The Montana Power Company, hereinafter referred to as "MPC", by its attorneys, pursuant to the Notice of Proposed Rule Making ("NPRM") adopted in the above-referenced proceeding, respectfully submits these Reply Comments for consideration by the Federal Communications Commission.<sup>1/</sup>

PRELIMINARY STATEMENT

1. MPC is an investor-owned utility providing electric and gas service to over 360,000 customers in the state of Montana. As an investor-owned utility, MPC

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<sup>1/</sup> In the Matter of Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Notice of Proposed Rule Making, WT Docket No. 94-148, 60 Fed. Reg. 2722 (January 11, 1995), Order extending Comment date to February 17, 1995 and Reply Comment date to March 17, 1995, adopted January 31, 1995.

receives no subsidies for the assumption of its responsibilities to its ratepayers. MPC's operating territory is approximately 107,600 square miles (roughly three-quarters of the entire State), and extends from the plains of eastern Montana to the rugged, remote and mountainous terrain of western Montana. The provision of electric services requires MPC to maintain approximately 10,000 miles of transmission lines and 14,000 miles of distribution lines. In conjunction with these utility activities and responsibilities, MPC operates extensive private operational-fixed ("POFS") microwave facilities licensed under Part 94 of the FCC rules.

2. The provision of electric and gas service to Montana's residences and businesses over this varied and remote terrain requires a substantial investment in POFS links over very long hops. The need for MPC's microwave system is obvious when one considers that more than half the population of the State resides in only six towns; the other half of the population is spread over the vast remaining expanse of Montana. Specifically, MPC maintains various land mobile systems, including SCADA with remote and mobile units, all of which are linked and monitored by its POFS microwave system. The communications made possible by its extensive private land and fixed communications networks are essential to reliable and safe operation of MPC's electric

and gas network. MPC must control the flow of electrical power so that it corresponds, at all times, to the power generation demands of its customers. Likewise, the instantaneous monitoring of the gas distribution system is critical to safely meeting consumer energy requirements, particularly in a state like Montana that experiences winter weather extremes. Absent MPC's POFS microwave system and the instant communications and network monitoring capabilities that it provides, relatively minor power disruptions could evolve into catastrophic blackouts or result in the loss of crucial natural gas supplies to large areas of the State.

3. MPC enjoys the flexibility it has in licensing its POFS facilities, and desires to maintain these rules under the proposed Part 101. Where possible, however, MPC seeks and supports greater flexibility in the Commission's POFS microwave rules.

4. Like other commenters, MPC supports the Commission's underlying goal to simplify and streamline the existing common carrier and POFS rules. It agrees that the similarities of these rules and the industry's move to create common standards and coordination procedures make it advisable to consolidate these rules into one comprehensive part. Also, since these microwave services share virtually

the same frequency bands, with the exception of the 2 GHz band, and adhere to similar technical and operational rules, MPC believes that further streamlining of these rules, as suggested by other commenters in this proceeding, is needed. Accordingly, MPC appreciates this opportunity to voice its support for those Comments which sought to further streamline and liberalize the Part 94 and Part 21 microwave rules.

#### **REPLY COMMENTS**

##### **I. There is Support for Allowing POFS Licensees to Lease Reserve Capacity to Common Carrier Licensees**

5. MPC agrees with several parties that permitting POFS to lease reserve capacity to common carriers is in the public interest.<sup>2/</sup> MPC agrees that improvements in transmission techniques and increases in transmission rates have created substantial efficiency in POFS spectrum use, leaving some microwave spectrum available for shared use. Moreover, utilities must build microwave systems to meet long-term, future growth requirements, and POFS systems sometimes have reserve bandwidth capacity which is not

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<sup>2/</sup> Comments of The Southern Company at 4-7, Entergy Services, Inc. at 4-6, Metropolitan Water District of Southern California at 5-7, Central and South West Services, Inc. at 3-6, Omaha Public Power District at 1 and UTC at 11-16.

needed immediately for utility traffic. Accordingly, POFS licensees should be permitted to find other users to share their reserve microwave capacity. Unfortunately, common carrier entities who are willing to lease the reserve capacity are prohibited from doing so by the existing Part 94 rules.

6. Since one of the goals of this proceeding, as the Commission indicates, is to "encourage more efficient use of microwave spectrum,"<sup>3/</sup> then it is in the public interest to allow POFS licensees to lease reserve capacity to common carriers. To do so, encourages efficient use of microwave spectrum. Therefore, MPC supports eliminating the eligibility and permissible use limitations proposed under Section 101.135.

7. MPC also agrees with Southern that allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers does not render the service a common carrier one.<sup>4/</sup> MPC believes that such an arrangement is merely a private carrier offering to a customer who happens to be a common carrier. The POFS

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<sup>3/</sup> NPRM at ¶ 7.

<sup>4/</sup> Comments of Southern at 6-7. See also, Comments of Metropolitan Water at 6-7, Entergy at 5-6 and Central and South West at 5-6.



licensee still has the discretion to refuse a customer's request for service, and can be discriminatory in service offerings and rates.<sup>5/</sup> MPC also supports UTC's theory that if the microwave facilities are being principally used for private purposes, then the service is private regardless of who leases reserve capacity.<sup>6/</sup> In this manner, no harm is done to the distinct eligibility and permissible use rules for both POFS and common carrier microwave licensees.<sup>7/</sup>

## **II. There is Support for Allowing Common Carrier and Non-Common Carrier Use and Licensing of Microwave Transmitters**

8. Several parties advocated allowing the use and licensing of non-common carrier operations on Part 21 microwave transmitters.<sup>8/</sup> As UTC explained, "[w]hen the private and common carrier microwave services were completely independent, it was appropriate . . . to limit encroachment on the frequencies available to one service by entities eligible in the other. Now, however, with most microwave bands available on nearly equal terms to entities

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<sup>5/</sup> Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976).

<sup>6/</sup> Comments of UTC at 14-16.

<sup>7/</sup> See Comments of Alcatel Network Systems, Inc. at 2, urging maintenance of these rules.

<sup>8/</sup> See Comments of Southern at 7-10, Entergy at 6-9, Metropolitan Water District at 7-10 and UTC at 11-16.

in either service, there is less concern that a licensee should restrict its operations to either a purely 'private' or a purely 'common carrier' communications services. The nature of the licensee's operation, and the nature of the regulatory regime affecting that licensee, are no longer dependent on the particular frequency band in which the licensee operates. Rather the type of regulation is dependent simply on the type of service or use made of the facilities."<sup>9/</sup>

9. Accordingly, MPC sees no benefit in the retention of proposed Section 101.113 which prohibits dual use and licensing (i.e., non-common carriage) of Part 21 microwave transmitters. This rule does not preserve any frequencies allocated to a particular service. Moreover, with the new microwave equipment, the transmitters do not have to be dedicated on a full-time basis to a particular service.

10. MPC urges the Commission to be guided by its earlier precedent where it eliminated the same rule when rewriting its Public Mobile Service rules, Part 22. There, the Commission indicated:

Advances in technology, such as improved digital transmission techniques and store-and-forward technology, have resulted in dramatically

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<sup>9/</sup> Comments of UTC at 12-13.

increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wide-area service could achieve substantial economies of scale by sharing transmitters when building a regional or nationwide system without diminishing the licensee's quality of service. . . . Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different channels.<sup>10/</sup>

For many of the same reasons that caused the Commission to eliminate Section 22.119, MPC supports the views of other parties that the companion rule section for Part 21 (§ 21.119) microwave systems should be eliminated.

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<sup>10/</sup> In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 92-115, CC Docket No. 94-46, 9 FCC Rcd 6513 (1994).

**III. Comments Reveal that Part 94 and Part 21  
Application Procedures Should Be Similar**

11. Virtually all the commenters agreed that, to the extent possible, the proposed Part 101 rules in all aspects should govern Part 94 and Part 21 licensees equally.<sup>11/</sup> This is especially true with regard to rules governing application and operational procedures.

**A. The Blanket Special Temporary Authority  
Should Be Extended to POFS Licensees**

12. First, many parties commented on the need for consistency with regard to Special Temporary Authority ("STA"), temporary authorizations and Blanket STAs. For example, the Association of American Railroads indicated that there should not be a distinction between private and common carrier microwave users with respect to STAs and Temporary Fixed Operation.<sup>12/</sup> MPC agrees. MPC also supports the Comments of other parties which seek to extend the Blanket STA policy to POFS licensees.<sup>13/</sup> The policy

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<sup>11/</sup> Comments of Comsearch at 3, Western Multiplex Corporation at 3, C.S.I. Telecommunications at 2, E.F. Johnson Company at 2, Pacific Bell et al. at 4-5 and UTC at 4-6.

<sup>12/</sup> Comments of AAR at 6.

<sup>13/</sup> Comments of Omaha Public Power District at 1, Metropolitan Water at 11, Entergy at 10-11, Central and South West at 7-8, Southern at 12-13. See also, Comments of Southwestern Bell at 5, seeking to codify the Blanket STA policy.

allows a Part 21 licensee, when issued a Blanket STA, to begin construction and operation of its microwave facilities as soon as the underlying application appears on public notice as accepted for filing, thus alleviating the need to file a separate STA request. This saves both the applicant and the Commission time and money. With the licensing procedures virtually the same, and now proposed to be governed by the same rule part, MPC sees no reason why this policy should not be extended to POFS licensees.

B. The 21-Day Minor Modification Rule  
Should be Extended to POFS Licensees

13. Also, many parties commented that the 21-day minor modification rule should be extended to POFS licensees.<sup>14/</sup> MPC agrees. MPC also agrees with Western Multiplex that the Commission should clarify which modifications can be made without prior FCC approval.<sup>15/</sup> Moreover, since the proposed Part 101 consolidates the rules which distinguish between major and minor modifications, and both services must adhere to the same licensing procedures regarding license modifications, it seems appropriate to extend the favorable Part 21 modification policies to POFS licensees.

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<sup>14/</sup> Industrial Telecommunications Association, Inc. at 6, UTC at 10, Southern at 10-11, Central and South West at 6-7, Omaha Public Power District at 1, Entergy at 9-10 and Metropolitan Water at 10-11.

<sup>15/</sup> Comments of Western Multiplex at 5.

**CONCLUSION**

14. MPC supports the Commission's efforts to streamline and simplify the existing Part 21 and Part 94 microwave rules. MPC believes that this NPRM is a positive step in eliminating unnecessary regulations, but that the proposed Part 101 can be improved by further consolidation, especially where favorable rules can be extended to benefit both POFS and common carrier microwave licensees. On the record, there is ample agreement that the Commission should:

- (1) allow Part 94 microwave licensees to lease reserve capacity to common carriers;
- (2) delete proposed Section 101.133 which prohibits non-common carrier use on Part 21 systems;
- (3) extend the Blanket Special Temporary Authority policy to POFS licensees; and
- (4) permit POFS applicants to have their minor modification applications be deemed authorized on the 21st day following public notice.

**WHEREFORE, THE PREMISES CONSIDERED,** Montana Power Company respectfully requests that the Commission act upon its Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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